

ARTICLE BY LARRY

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NEW YORK TIMES
24 February, 1985

CBS Isn't Blameless

By Stephen Klaidman

WASHINGTON — There was a sad and somewhat hollow ring to Gen. William C. Westmoreland's claims of victory in his two-and-a-half year battle with CBS to save his honor and punish the network to the tune of \$120 million. The network has indeed won. The General has capitulated. But there is something unpleasant about the way CBS is gloating in victory.

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In their joint statement, CBS and General Westmoreland said they "believe that their respective positions have been effectively placed before the public." That is probably true. But it has been done at a cost of millions of dollars and considerable anguish on both sides. That alone makes gloating seem inappropriate.

In fact, had "The Uncounted Enemy: A Vietnam Deception," the documentary over which the court battle was fought, been produced in a less polemical fashion, with more concern for standards of fairness, the public would undoubtedly have been better served and the lawsuit would probably have been avoided.

The reason is that CBS almost certainly misled viewers by reducing an extremely complex situation to an unrealistically simple thesis — that General Westmoreland "cooked the books," conspiring to deceive the President about enemy troop strength so that he could continue pursuing an immoral and unwinnable war.

Even if you buy the CBS thesis, as some knowledgeable observers do, the question still arises, why produce the show in such a one-sided way? After all, there are many equally knowledgeable observers who consider the thesis absurd in its simplicity. Even more to the point, many of the participants in the situation described on the program took a very different view on the matter from the one presented by CBS Reports, and they were not heard on the air.

A common answer is that to be "good television" a documentary must have "impact" — that no effective program says, "On the one hand this, but on the other, that." The implication is that unless the show has impact, nobody will watch it.

But that argument is largely specious, because networks know that very few viewers watch news documentaries — even those with substantial impact, like "The Uncounted Enemy." That is why the networks put such films on the air at hours

when few adults are at home watching television. "The Uncounted Enemy" aired at 9:30 P.M. on a Saturday. The networks air news documentaries partly as a public service and partly for public relations — not to attract big audiences.

What that means is that a little more fairness and a little less impact could surely be tolerated in documentaries with very little loss of audience. In this particular case, General Westmoreland would have benefited, the public would have benefited and CBS probably would have avoided a costly and debilitating lawsuit.

Another concern that has been expressed over and over again by journalists and libel lawyers during both this trial and the one in which Ariel Sharon sued Time magazine has to do with their alleged "chilling" effect — the possibility that if the press lost one of these big cases, it would discourage thorough investigative reporting whenever there is a risk of libel. Some have even argued that just the expense of defending against a libel charge, even with libel insurance, would have a chilling effect.

The problem with this argument is the assumption behind it that it is impossible to do hard-nosed investigative reporting and at the same time write carefully enough to protect against a libel suit. Little evidence has been produced to support that judgment.

In this case, the inclusion in the film of perhaps 10 minutes of interviews with a few people who disagreed with its thesis might well have satisfied General Westmoreland. It would certainly have given the public a sense of the complexity of the dispute, and it probably would have avoided the suit.

CBS has taken the position that the errors made in producing "The Uncounted Enemy" were procedural and essentially trivial. But the facts suggest that they are institutional and significant enough to warrant reevaluating the way in which news documentaries are made. □